

ORDINANCE NO. NS-2159

AN ORDINANCE CREATING BEND CODE TITLE I GOVERNMENT AND PROCEDURES

Findings

- A. The City of Bend is in the process of a thorough revision of the Bend Code.
- B. City staff has reviewed the provisions in the current version of Chapter 1 of the Bend Code and proposes amendments.
- C. Consistent with the new organization of the code, the amended provisions will be known as Title 1 Government and Procedures.

Based on these findings

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Code Chapter I is amended to become Title I and shall read as shown in Exhibit A.

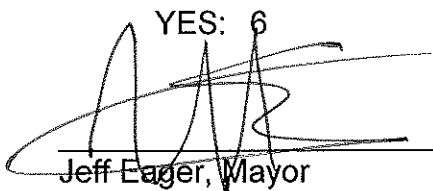
Section 2. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

Read for the first time on April 6, 2011.

Read for the second time on April 20, 2011.

Adopted by roll call vote on April 20, 2011.

YES: 6 NO: 0



Jeff Eager, Mayor

ATTEST:



Patricia Stell, City Recorder

Approved as to form:



Legal Counsel

Exhibit A

TITLE I – GOVERNMENT AND PROCEDURES

CHAPTER 1.05 GENERAL PROVISIONS

1.05.005 Interpretation

This code shall be interpreted as giving the City, City officials and City staff the broadest possible scope of authority. Unless otherwise specified to the contrary, the grant of authority or responsibility to any city official shall include the named official and any designee. No formal delegation or designation of authority by the official to subordinate city employees is required. Words and phrases shall be taken in their plain, ordinary, and usual sense. However, technical words and phrases having a specific legal meaning shall be understood to have that meaning. A general term following specific enumeration of terms is not to be limited to the specifics enumerated unless expressly so limited.

1.05.010 Caption

Headings and captions in this code are part of the code and shall be considered in interpreting the scope and meaning of the text.

1.05.015 City Seal

The original City Seal is on file with the City Recorder. The City Seal is to be used only on official City documents.

1.05.020 Computation of Time

The time within which an act is to be done shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the time to complete the act shall be extended to the next day. If the act requires delivery to or filing with the city, if city hall is not open for business on the day delivery is due, the deadline shall be extended until the next day the city is open for business.

1.05.025 Correction of Scrivener's Errors

In preparing adopted ordinance for codification and distribution, the City Recorder shall not alter the sense, meaning, effect, or substance of any ordinance, but may correct manifest clerical or typographical errors, either before or after codification.

1.05.030 Definitions

As used in this code, the following words are defined as follows, unless the context clearly indicates or requires a different meaning or otherwise specified.

- (1) City: The City of Bend, Oregon.
- (2) City Manager: The City Manager of the City.
- (3) Chief of Police: The Chief of the Bend Police Department
- (4) City property: All other real property owned or controlled by the City.
- (5) County: Deschutes County, Oregon
- (6) Fire Chief: The Chief of the Bend Fire Department
- (7) Judge: means a Bend Municipal Court Judge, including any pro-tem judges.
- (7) Legal Owner: The owner who has title to the property, although the title may actually carry no rights to the property other than as a lien.
- (8) Law Enforcement Agency: Any city, county, state or federal agency or department with authority to enforce criminal laws.
- (9) Person: An individual, corporation, partnership, company, trustee, or any other legal entity.
- (10) Quorum: A majority of the members of a body shall constitute a quorum. .
- (11) State: The State of Oregon.
- (12) Tamper: To manipulate or attempt to manipulate a part of the vehicle whether or not an instrument is used and whether or not actual damage is done.
- (13) Vehicle: Every vehicle including, but not limited to, automobiles, motor boats, motorcycles, mopeds, trucks, trailers, busses, motor homes, bicycles.
- (14) Year: A calendar year unless otherwise expressed.

1.05.035 Severability

If any provision, section, phrase, or word of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

1.05.040 Reference to Offices

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of the City exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

Chapter 1.10 CITY COUNCIL

1.10.010 Council Rules

As authorized by the Bend Charter, the City Council shall adopt rules applicable to the Council and Council meetings. The Council Rules shall be posted on the City website.

1.10.020 Ordinances

Ordinances that impose generally applicable rules are to be adopted as amendments to this Code and the title of the ordinance is to indicate that the ordinance amends the Code. In the event that an ordinance does not specify that it is amending the Code, the City Recorder shall determine whether the ordinance should be incorporated into the Code. Failure to comply with this section does not invalidate any ordinance.

1.10.030 Request to Adopt Ordinances

- (1) Any person may request a Council member to initiate a proposed ordinance. The Council member shall have total and absolute discretion whether to initiate a proposed ordinance.
- (2) Any person may request that the Council as a whole initiate a proposed ordinance. The request may be in writing or oral request during the visitor's section of a Council agenda. The Council shall have total and absolute discretion whether to initiate a proposed ordinance.
- (3) If a citizen requests adoption of an ordinance, the City will follow all applicable procedural and format requirements. Ordinances will not be considered for immediate adoption if they have not been placed on the agenda. If the Council decides to proceed with an ordinance proposed by a citizen, the Council will by motion direct staff to prepare the ordinance and place it on a future agenda to give the public an opportunity to comment before adoption.

Chapter 1.20 ADVISORY BOARDS, COMMITTEES AND COMMISSIONS

1.20.005 Applicability and Authority

- (1) Applicability. Sections 1.20.005 through 1.20.015 apply to all City boards, commissions and committees, including temporary or ad hoc committees unless mandated otherwise by state statute or city ordinance. Provisions applicable to specific boards, commissions, or committees shall prevail over inconsistent provisions in these general provisions.
- (2) Unless explicitly authorized by statute, ordinance, or other formal action of the City Council, the authority of boards, committees, and commissions is limited to making recommendations to the City Council. No board, committee, or commission, as a whole, or any member or members individually or collectively, may bind the City, its officers, or agents to financial commitments or obligations. The decision-making authority of boards, committees, and commissions is limited to the authority expressly granted by state law or city ordinance.

1.20.010 Board, Committee, and Commission Appointments and Service

- (1) Persons interested in serving on a board, committee or commission shall complete an application and file it with the City Recorder.
- (2) The Mayor and Council members may interview applicants for a vacancy.
- (3) Reappointments to a board, committee, or commission shall be considered in accordance with this section, together with the type of service the individual has already given to the board, committee, or commission and his/her stated willingness to continue. Board, committee or commission members may serve two consecutive terms, or six years, whichever is greater.
- (4) Non-city residents may be appointed when the board, committee, or commission serves persons outside city boundaries.
- (5) Board, committee, or commission vacancies are filled by appointment of the Mayor with confirmation by the Council. Council confirmation shall be by approval of a motion. Appointments are made for terms not to exceed four years and will expire the last day of the calendar year if a replacement appointment has been made unless mandated otherwise by state statute. All board, commission, and committee members shall serve without compensation. If no replacement is appointed to replace a member whose term is expiring, the member shall remain in office until a replacement is appointed. When the provisions governing membership or terms are amended, the term of existing members shall not be affected unless expressly stated in the ordinance.

- (6) To avoid imposition on certain citizens, persons are not expected to participate in more than one permanent commission, board, or committee at a time, although board, commission and committee members may serve as members of ad hoc or temporary committees.
- (7) Members of a board, committee, or commission serve at the pleasure of the Council and may be replaced at any time.
- (8) Vacancies shall be filled in the same manner as an initial appointment, but the appointment shall be for the unexpired term.

1.20.015 Organization and Operation

- (1) Election of Chair and Vice-chair Each committee shall elect a chair and vice-chair by motion annually at the first meeting in each calendar year.
- (2) Staff Support. The City will provide necessary staff support for boards, commissions and committees, including postage, meeting place, clerical service, and new member orientation and training.
- (3) Meetings. All meetings shall be subject to the requirements of Oregon public meeting law. A majority of the voting members shall constitute a quorum for the conduct of business and the concurrence of a majority of those members present and voting shall be required to decide any matter. These meetings shall be an opportunity for public involvement in the discussion of issues relating to that particular board, committee, or commission.
- (4) Annual Reports and Minutes. Except for the Budget Committee, each committee, board or commission shall report on its activities at least annually. The written minutes for each committee, board or commission shall be submitted to the City Recorder or Council for information.
- (5) State Law. Boards, commissions, and committees of the City are subject to state public records statutes. Board, committee, and commission members appointed by the City are considered "public officials." As such, they are expected to abide by state statutes governing conflicts of interest and other applicable provisions of state ethics law. Board, committee and commission members are subject to state restrictions on election advocacy.
- (6) Comments. Boards, committees, and commissions may be asked to provide comments to other advisory bodies and staff when matters under consideration relate to their functional area of expertise.
- (7) Establishment of Permanent Board, Commissions, and Committees. Permanent boards, commissions, and committees shall be established by ordinance, except

that boards, commissions, and committees may be established by other means if required or expressly authorized by state law.

(8) Temporary Committees

The Council may establish temporary committees (task forces) by resolution to address specific issues or to engage in specific tasks. The scope of the authority and responsibilities of the temporary committees shall be established in the resolution creating the temporary committees.

(9) City Manager Advisory Groups

Nothing in this Code is to be construed to prohibit the City Manager or other administrative staff from creating informal groups for the purpose of obtaining information. This includes technical advisory groups, focus groups, and evaluation teams.

1.20.020 Budget Committees

- (1) The City and the Urban Renewal Agency shall each have a budget committee formed in accordance with state law.
- (2) Budget committees shall have the rights, responsibilities, and authority provided by state law.
- (3) A City Budget Committee member may also serve on the Urban Renewal Budget Committee.
- (4) Citizen members serve a term of four consecutive years and a maximum 2 terms or 6 years whichever is greater. Elected members serve for the duration of their term on the Bend City Council.

1.20.025 Civil Service Commission – Civil Service System for Fire Personnel

(1) Establishment.

- (A) The City of Bend Civil Service Commission is established and shall have the authority and responsibility provided by this code.
 - (B) The Civil Service Rules and Regulations as supplemented by the Fire Association collective bargaining agreement. City personnel policies, City budget and payroll systems shall constitute a civil service system covering employees of the fire department as required by state law.
- (2) The Civil Service Commission shall have the following duties:
- (A) Adopt and implement rules for fire department recruitment, selection, promotions, retention, discipline and discharge.

(B) Inspect facilities and operations to implement this section.

(C) Investigate written complaints or statements of irregularities or violations of the Civil Service Rules and Regulations.

(3) Membership.

(A) The City of Bend Civil Service Commission consists of three members who are not officials or employees of the City.

(B) All members shall be residents of the City and registered voters of Deschutes County.

(C) The term of office of each Commissioner shall be six years, except that the term of office of any Commissioner appointed to fill a vacancy in the office shall be for the unexpired term of the vacant office.

(D) The Commission shall elect one of its members as chairperson.

(E) Two members of the Commission constitute a quorum, and the votes of two members shall be sufficient for the decisions and the transaction of the business of the Commission.

(F) The Commission will hold meetings as necessary for the proper discharge of its duties.

(G) Commission members, the Executive Board for the Fire Association, and Fire Department executive staff shall be notified of meeting dates and times.

(4) This section does not limit the City's authority to create or abolish positions or to determine compensation for Fire Department employees.

1.20.030 Planning Commission

(1) Powers and Duties. The Bend Planning Commission is established, and shall have the authority and responsibility provided by this code and state law. The Commission shall have the following duties:

(A) Review those land use applications within its jurisdiction pursuant to applicable laws.

(B) Review and act on appeals of land use and other decisions pursuant to the City's land use procedures.

- (C) Act as the Citizen Involvement Committee within the Bend Urban Growth Boundary and advise the City Council on citizen involvement programs.
- (D) Make recommendations to the City Council on legislative land use actions.
- (2) Membership.
 - (A) The Bend Planning Commission consists of seven members who are not officials or employees of the City. All voting members shall be residents of the City.
 - (B) No more than two voting members of the Commission may engage principally in buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling, or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession.
 - (C) No Commission member shall serve more than two full terms or ten years, whichever is greater.
 - (D) Consideration shall be given to including representative of the various geographical parts of the City of Bend.
 - (G) The Commission shall elect a Chair and Vice-Chair to serve one-year terms. Election of the officers shall be held at the first meeting of the Commission in each calendar year, but failure to hold the election at the first meeting in a calendar year shall not invalidate any action by the Commission.
 - (H) City planning staff shall perform administrative functions for the Planning Commission.
 - (I) Four members of the Commission shall constitute a quorum. The Commission may act by a majority of those voting while a quorum is present. The Commission shall meet in accordance with its bylaws. The Commission may adopt and amend rules and regulations to govern the conduct of its business.

1.20.035 Urban Renewal Agency

- (1) Governance. The Bend Urban Renewal Agency is created and all authority of the Bend Urban Renewal Agency shall be exercised by the City Council. Any act of the Bend Urban Renewal Agency is an act of the urban renewal agency only and not of the City or City Council.

- (2) Officers and Administration. The administrative responsibilities of the Bend Urban Renewal Agency shall be discharged by City of Bend personnel under the supervision of the City Manager, who shall function as the executive director of the Bend Urban Renewal Agency. The Bend Urban Renewal Agency may select the following officers by a majority vote:
 - (A) Chairperson. The Chairperson must be a member of the Agency and shall preside at all Agency meetings.
 - (B) Vice-Chairperson. The Vice-Chairperson must be a member of the Agency and shall act as chairperson in the absence of the Chairperson.

Chapter 1.25 ELECTIONS

1.25.005 City Elections

- (1) Initiative and Referendum Measures. All elections related to initiative and referendum elections shall be in compliance with the rules established by the Secretary of State's office and shall comply with State Law.
- (2) Nomination of Candidates for City Council.
Candidates for City Councilor can only be nominated for that office by filing a nominating petition with the City Recorder and may not be nominated by filing a declaration of candidacy. The requirements of the nominating petition and the procedures for filing it shall be as provided by State Law except that the nominating petition shall contain at least 150 signatures of electors of the City of Bend.
- (3) Election Dates
All elections shall be held on the same biennial State general and special elections dates in accordance with State Election law. The City Recorder is the City Election Officer and will file all necessary initiatives, referendum measures and candidates nominations with the County Clerk of Deschutes County.

Chapter 1.30 CITY MANAGER AND CITY ATTORNEY

1.30.005 City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines

- (1) The City Manager is authorized to adopt administrative regulations, policies and guidelines to implement the City Manager's authority under the Charter or as delegated by the City Council.

- (2) The City Manager's authority under Subsection (1) includes but is not limited to the authority to adopt regulations, policies and guidelines relating to:
 - (A) Hiring, discipline, termination, supervision and control of City staff other than Council and Mayor Appointees.
 - (B) Operation, maintenance and use of city-owned public utilities, including water, sewer, storm drainage, and transportation utilities, and the watershed.
 - (C) Operation, maintenance and use of all city-owned property, including; properties generally open to the public as well as city owned properties that have restricted public access. For purposes of this section, properties owned by the Bend urban renewal agency shall be considered to be owned by the City.
 - (D) Operation of public services offered by the City, including but not limited to transit services, and
 - (E) Any authority delegated to the City Manager by the City Council.
- (3) Regulations adopted by the City Manager and made available to the public by posting on a city website, by posting at the facility subject to the regulations, or by being made available at City offices shall be enforceable and binding on members of the public. The Council may review any regulation adopted by the City Manager on its own motion, or on petition of any person filed within 30 calendar days of the first public posting of the regulation.
- (4) City employees shall comply with all regulations, policies and guidelines adopted by the City Manager.
- (5) All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and Council ordinances.

1.30.010 City Manager Discretionary Authority

- (1) The City Manager has the discretion to make all administrative decisions for the City relating to all functions of the City. The City Manager's authority is limited to administrative matters and does not extend to legislative decisions. The City Manager shall have complete discretion in administrative decision-making, consistent with applicable laws and Council resolutions and policies.

- (2) The City Manager's authority under Subsection (1) extends to all administrative matters of the city, except to the extent that decision-making authority is granted to another under applicable law. "Administrative matters" is to be interpreted broadly to encompass all decisions other than legislative decisions or other decisions expressly reserved to a decision-maker other than the City Manager.

1.30.015 Authority Regarding Contracts and Intergovernmental Agreements (IGAs)

- (1) The City Manager may sign any contract approved by City Council or contracts that do not require Council approval.
- (2) The City Manager may approve and sign any intergovernmental agreement that is administrative in nature and does not involve policy issues that are within the scope of Council consideration.

(A) Intergovernmental agreements are administrative in nature if they involve work to be done by another governmental entity that could be done by City staff or if the City is to provide services and the City is compensated for its services or can provide the services without incurring additional costs.

(B) The City Manager may approve and sign any intergovernmental agreement if the City Manager has the authority to approve and sign a similar agreement with a nongovernmental entity.

(C) The City Manager may approve and sign any renewal or extension of an intergovernmental agreement originally approved by the City Council.

- (3) The City Manager has to the authority to pay bills and claims. The City Manager shall maintain a record of bills and claims.

1.30.020 Authority Regarding Real Property

- (1) The City Manager may approve the acquisition of an interest in real property if that interest is valued at less than \$25,000.00 or if the property is valued at more than \$25,000.00 and is donated to the City.
- (2) Dedications of property for rights-of-way shall not be considered acquisitions of property by the City for purposes of this section and may be accepted by the City Manager.
- (3) The City Manager may transfer an easement, leasehold or other interest in real property less than fee title if the value of the interest transferred is less than

\$25,000.00 and the City Manager determines that the transfer is not contrary to the public interest.

- (4) The City Manager may transfer real property or any interest in real property if the sale price is at least 90% of the appraised value and the City Manager determines that the transfer is not contrary to the public interest.

1.30.025 City Attorney

- (1) The City may choose to employ an in-house City Attorney or contract with an outside lawyer or law firm to provide City Attorney services. The City Attorney is hired by and reports to the City Manager.
- (2) An in-house City Attorney may employ Assistant City Attorneys. The City Attorney may delegate responsibilities under this Chapter to Assistant City Attorneys, provided the City Attorney retains supervisory control.
- (3) The City Attorney may retain additional outside counsel to provide legal services on matters requiring specialized legal knowledge or training or if the resources of the City Attorney's office are not sufficient to timely provide all legal services needed by the City. In most cases, retention of outside counsel should be through the City Attorney's office, although outside counsel may be retained and budgeted by City Departments with the approval of the City Manager and City Attorney.
- (3) The City Attorney's client is the City of Bend as an entity. The City Attorney may provide legal advice to (a) the City Council as a body, (b) the City Manager, (c) department heads and management personnel, and (d) individual staff members in connection with their work responsibilities. The City Attorney may independently review legal issues affecting the City that come to the attention of the City Attorney.
- (4) All ordinances and resolutions must be reviewed by the City Attorney before being presented to the City Council. As needed, the City Attorney shall provide an explanation to the City Council of support of or objections to an ordinance or resolution.
- (5) No City contract or intergovernmental agreement may be entered into without City Attorney review and approval. A contract using a form approved by the City Attorney is considered to have been approved by the City Attorney. The City Attorney may provide blanket approvals of contracts below a certain cost amount.

Chapter 1.35 MUNICIPAL COURT

1.35.000 Authority of Judge

The Municipal Judge has all statutory authority of a Justice of the Peace and all authority conveyed by the Charter and this Code. The Municipal Judge has contempt authority and the authority to issue warrants to enter real property and the authority to issue orders to compel appearance.

1.35.010 Municipal Court Procedures

Any failure to comply with the Oregon Revised Statutes that may be tried as a violation under ORS Chapter 153 or similar statutes may be tried in Bend Municipal Court. Violations of any provision of the Bend Code shall be tried as civil infractions in Bend Municipal Court. Misdemeanors and felonies shall not be tried in Bend Municipal Court, but any violation of the Bend Code listed as a misdemeanor may be tried as a civil infraction in Bend Municipal Court.

1.35.015 Court Costs

A defendant in Municipal Court who does not prevail shall pay all court costs and assessments imposed by State law. The City Council may set the amount of court costs by Council resolution. Payment of the full amount of costs and assessments is required of any defendant who does not prevail. Costs and assessments are in addition to any fine or penalty imposed by the court. The City may require payments of costs and assessment prior to hearing, and refund the costs and assessment if the defendant prevails. The City Council may adopt non-refundable fees by resolution to cover administrative costs and costs associated with program supervision by the court.

1.35.020 Payment of Fines and Costs

- (1) Time and Method of Payment. If a defendant is required to pay a fine, penalty or cost, the Municipal Court may grant permission for payment to be made within a specified period of time or in specified installments. Unless otherwise approved by the Court, the fine or penalty shall be payable immediately.
- (2) Effect of Non-Payment. The Municipal Court may pursue collections of fines or penalties by any means allowed under Oregon law. Any unpaid penalty may be filed in the City's lien docket.

CHAPTER 1.40 CIVIL INFRACTIONS

1.40.005 Definitions

The following definitions apply in this chapter:

- (1) Code Enforcement Officer All police officers, community service officers, the Building Official, the Community Development Director, the City Engineer, the Fire Marshal, and all other persons designated by the City to serve as code enforcement officers.
- (2) Civil Penalty The monetary payment imposed for violation of a city ordinance.
- (3) Infraction An action or failure to act in violation of any provision of the City code, any City ordinance, or any order, permit, license, approval, or condition authorized by code or ordinance.
- (4) Responsible Party The person responsible for curing or remedying an infraction. Responsible party includes:
 - A. The person alleged to have committed or authorized the infraction.
 - B. If an infraction involves a condition of or on real property, the property owner, any agent of the property owner, and any person occupying or having possession of the property.
- (5) Respondent The person to whom a citation or summons is issued.

1.40.010 Purpose

The purpose of this chapter is to establish a civil infraction procedure for enforcement of City ordinances. The City may use the civil infraction procedure for any infraction. The civil infraction procedure is not a criminal procedure. The civil infraction procedure is not exclusive, and the City may use any other procedure for enforcement authorized by law, including the City's nuisance procedure, any procedure established by state law, or enforcement through appropriate actions in circuit court. The civil infraction procedure may be used in conjunction with other enforcement actions or procedures.

1.40.015 No Mental State Required

A culpable mental state is not required to establish an infraction unless the mental state is part of the code provision, ordinance, or other requirement alleged to have been violated.

1.40.020 Civil Infraction Pre-Citation Procedures

- (1) Reporting All reports or complaints of infractions shall be referred to the appropriate code enforcement officer.
- (2) Review of Facts The appropriate code enforcement officer shall investigate the facts and circumstances surrounding any infraction reported or otherwise made known to the code enforcement officer.
- (3) Prior Contact Before a civil infraction citation is issued, the code enforcement officer may contact a responsible party and may give the responsible party a reasonable opportunity to cure or remedy the alleged infraction. Contact prior to issuance of a citation is solely within the discretion of the code enforcement officer. If prior contact is made, the following information shall be communicated to the responsible party:
 - A. Description or identification of the activity constituting the alleged infraction and identification of the recipient as being the reputed responsible party for the infraction;
 - B. A statement that the code enforcement officer has determined the activity to be an infraction;
 - C. A statement of the action required to remedy the infraction and the time and/or date by which the remedy must be completed;
 - D. A statement advising that if the required remedy or cure is not completed within the time specified, a citation will be issued and that a civil penalty in the maximum amount provided for the particular infraction may be imposed.

1.40.025 Voluntary Compliance Agreement

The City and a responsible party may enter into a written voluntary compliance agreement to attempt to resolve the alleged infraction. The fact that a person alleged to have committed a civil infraction enters into such an agreement shall not be considered an admission of having committed an infraction for any purpose. The City will not serve or file a citation while a voluntary compliance agreement is in effect and is being complied with. If the terms of the voluntary compliance agreement are satisfied, the City shall take no further action concerning the alleged infraction other than those steps necessary to terminate the matter. The failure to comply with any term of the voluntary compliance agreement constitutes a separate civil infraction. If the voluntary compliance agreement is not complied with, the code enforcement officer shall issue a citation for the infraction that is the subject of the voluntary compliance agreement. The maximum penalty for willfully failing to comply with the voluntary compliance agreement shall be

double the maximum penalty on the underlying infraction. Nothing in this section precludes informal resolution without a written agreement.

1.40.030 Citation Issuance and Form

- (1) Issuance A civil infraction citation may be issued any time after discovery of an infraction. Unless authorized in writing by the City Attorney, only code enforcement officers or the City Attorney may issue citations for City ordinance violations.
- (2) Form of Citation The City may use any form sufficient to inform the respondent of the nature of the alleged infraction and the options to respond to the citation. The citation should include:
 - (A) A summons to appear, either personally in court or by submitting a written answer to the court prior to the scheduled court appearance date;
 - (B) The name and location of the court, including the mailing address where written answers may be sent;
 - (C) The name of the person cited;
 - (D) The date, time, and place the infraction occurred, or, if the infraction is of a continuing nature, the date, time, and places the infraction was observed;
 - (E) The date on which the citation was issued;
 - (F) A readily understandable statement of the nature of the alleged infraction;
 - (G) The civil penalty amount for the alleged infraction;
 - (H) The date and time for the court appearance.

1.40.035 Service of Summons

Service of summons on individuals may be made by any of the following means:

- (1) Service by Mail. Service may be made by mailing a copy of the citation by certified mail, return receipt requested, to the individual's last known mailing address. Service by mail shall be deemed to occur three days after mailing within the state, and seven days after mailing outside the state. Default may be entered against a person served by mail on submission of evidence of receipt, non acceptance, or rejection of the certified mail by the person served.

- (2) Service by Posting. If the alleged infraction relates to real property, the citation may be served by posting the citation at the main entry to an occupied residence or office on the property if the person to whom the citation is issued is not present. A copy of the citation shall be mailed by certified mail, return receipt requested, restricted delivery to the responsible person at the mailing address of the property no later than the end of the business day following posting. For purpose of this section, Saturdays, Sundays, and federal or city holidays shall not be considered business days. If service is made in accordance with this subsection, service shall be not less than five days before the court appearance date contained in the summons. Service shall be completed upon mailing.
- (3) Other Methods of Service. Service may be made by any means authorized by Oregon Rules of Civil Procedure (ORCP) 7, and service on entities, minors, and incapacitated persons shall be as provided in ORCP 7.

1.40.040 Filing of Citation

The code enforcement officer shall file the original citation and a return of service showing service as authorized in Section 1.40.030 with the municipal court.

1.40.045 Response, Answer and Appearance

Compliance with the State law "violation" procedure shall be deemed compliance with the procedural requirements of this Chapter.

- (1) Response Options. The respondent shall respond to the citation either by appearing in court as specified in the citation or by submitting a written answer that must be received by the municipal court prior to the scheduled appearance. Answers and appearances may be through legal counsel. A respondent who submits a written answer received by the City prior to the scheduled appearance is not required to appear at the scheduled appearance. It is the respondent's responsibility to assure that any written answer is received by the court prior to the appearance date.
- (2) Written Answer. The respondent's answer may take three forms:
 - (A) A written explanation, with payment of the amount stated in the citation. The statement shall constitute a waiver of hearing and consent to judgment. The written information may contain evidence that the violation has been corrected. The court shall review the written statement, the citation and any other evidence that may be available, including any written submission of the code enforcement officer. The court shall issue a judgment based on the record and may notify the code enforcement officer and the responsible party of the decision. The court may refund some or all of the amount submitted.

- (B) An admission of the infraction, accompanied by payment of the amount stated in the citation. On receipt of an answer admitting the civil infraction, the court shall enter judgment in the amount stated in the citation.
 - (C) A denial and a request for a hearing. Correction of the violation is not a defense.
- (3) A written explanation without payment shall be treated as a denial and request for a hearing.
 - (4) Appearance. If the respondent does not file an answer by the scheduled appearance date, the respondent must appear in court as scheduled. At the in-court appearance, the respondent may admit the infraction, not contest the infraction, or deny the infraction. If the respondent admits or does not contest the infraction, the respondent will be allowed to provide an explanation, including evidence that the violation has been cured, and request that the penalty be reduced. If the respondent denies the infraction, the matter will be scheduled for a hearing at least two weeks after the date of the appearance unless an animal has been impounded or an immediate remedy is required. The court will mail confirmation of the hearing date and time. Appearances may be rescheduled for good cause by agreement of the court and respondent prior to the date scheduled for the hearing. Requests for rescheduling shall be in writing and should normally be made at least seven days prior to the scheduled hearing. If the respondent does not deny the infraction, the municipal judge shall determine the amount of the penalty to be imposed and shall enter a judgment.

1.40.050 Hearing

- (1) If the respondent's request for a hearing is received by the court prior to the scheduled appearance, a hearing date will be set by the municipal court. The municipal court shall notify the respondent by mail of the date and time of the hearing.
- (2) The respondent may be represented by a lawyer at respondent's expense. Respondent or respondent's lawyer shall provide written notice to the Court that respondent will be represented. If notice of appearance by a lawyer has not been provided the Judge at the hearing shall give the code enforcement officer the option of proceeding or postponing the hearing so that the City Attorney may be consulted.
- (3) The City Attorney may appear at any hearing where the respondent is represented by a lawyer, and may assist the code enforcement officer in all cases.

- (4) Each party shall have the right to present evidence and witnesses, to cross-examine the other party's witnesses, and to submit rebuttal evidence.
- (5) If the respondent wishes to compel the attendance of witnesses, the respondent must submit a written request to the court at least 10 days prior to the scheduled hearing, accompanied by a fee of \$35 per subpoena, or higher amount authorized by Council resolution, to cover the costs of preparing the subpoena. The code enforcement officer or the City Attorney may also request that the court subpoena witnesses. Signed subpoenas shall be given to the party seeking the subpoena, who shall be responsible for serving the subpoena and for paying subpoenaed witnesses a witness fee of \$35 per day per witness.
- (6) Only evidence relevant to the infraction alleged in the citation will be considered or admitted.

1.40.055 Evidence At Hearings

- (1) Oral evidence shall be taken on oath or affirmation.
- (2) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a decision unless it would be admissible under the Oregon Rules of Evidence.
- (3) Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (4) Irrelevant and unduly repetitious evidence shall be excluded.
- (5) The City shall have the burden of proving the alleged infraction by a preponderance of the evidence.
- (6) The City shall not call the respondent as a witness, but if the respondent chooses to be a witness, the City may examine the respondent and shall not be limited to cross-examination.

1.40.060 Decision, Appeal

- (1) The court shall determine whether the infraction alleged in the citation was committed and shall enter judgment accordingly, including the amount of any penalty imposed. A copy of the judgment shall be delivered to the respondent personally or by mail. The judgment may provide that payment be suspended if the violation is cured within a specified time.
- (2) The decision of the municipal court shall be final. Judicial review of the municipal court decision shall be by writ of review under ORS Chapter 34.

1.40.065 Enforcement

- (1) Failure to Appear or Answer. If a cited person fails to respond to a citation as required by this chapter, a default judgment shall be entered in the amount of the scheduled penalty.
- (2) Payment of Penalty and Fees. Any penalty or fee is to be paid no later than 10 days after entry of the judgment or such later time as authorized by the municipal judge or by agreement with the City.

1.40.070 Lien Filing and Docketing

- (1) Filing. A copy of a judgment imposing a penalty may be filed in the City lien docket.
- (2) Judgment as Lien. A judgment amount entered in the City lien docket shall be a lien for an initial period of 10 years upon all real property in the City owned by the person against whom judgment was entered.
- (3) Renewal of Lien. If a judgment is renewed by the municipal court, the lien created by Subsection (2) is automatically extended ten years from the renewal date.
- (4) Recording Lien in County Records. The City may file the municipal court judgment and a declaration of lien with the County Clerk of any county in the state where the person against whom the judgment was entered owns property.
- (5) Licenses and Permits. The City may deny or revoke any City license or permit held or applied for by a person who has not paid a judgment imposing a civil penalty.

1.40.075 Civil Penalty

The amount required to be paid as a civil penalty shall be established by the Council by ordinance or resolution. The Council may establish the maximum civil penalty by ordinance and may establish the amount to be paid on issuance of a citation by resolution, which may be less than the maximum civil penalty established by ordinance.

1.40.080 Schedule of Penalties

- (1) Infractions for violations of the Bend City Code are classified as follows:
 - (A) Class A civil infractions with a maximum civil penalty of \$750
 - (B) Class B civil infractions with a maximum civil penalty of \$400

(C) Class C civil infractions with a maximum civil penalty of \$200

1.40.085 Penalty Schedule

The court is authorized to establish a penalty schedule for any civil infraction. A copy of this schedule is to be kept at the office of the Municipal Court Clerk.

CHAPTER 1.45 IMPOUNDING VEHICLES, INVENTORY

1.45.010 Purpose and Scope

This chapter provides the procedures for towing a vehicle by or at the direction of the Bend Police Department and for conducting inventories of personal property in an impounded vehicle. This policy shall not be interpreted as limiting any legal authority that police officers may have to search persons or to search or seize property. Failure to follow this chapter does not give rise to a claim against the City, the police department, or any individual, but may be grounds for disciplinary action by the City.

1.45.020 Vehicle Impounds

Police officers may order the towing or impoundment of vehicles in the following circumstances:

- (1) Abandoned vehicles.
- (2) Vehicles left in or partially in a vehicle travel lane that block or restrict traffic.
- (3) Vehicles that need to be moved from their current location when the owner is arrested, cannot be located, or is incapable of caring for the vehicle.
- (4) Recovered stolen vehicles.
- (5) Vehicles disabled in a collision.
- (6) Vehicles seized as evidence in a criminal investigation.
- (7) Under any statutory authority, consistent with constitutional restrictions.

1.45.030 Definitions

The following definitions apply in this chapter:

- (1) Valuables means:
 - (A) Cash money of an aggregate amount of \$100 or more; or

- (B) Individual items of personal property with a value of \$100.00 or more.
- (2) Open Container means a container that is unsecured or incompletely secured in a fashion that the container's contents are exposed to view.
- (3) Closed Container means a container whose contents are not exposed to view.

1.45.040 Inventories of Impounded Vehicles

- (1) The contents of all vehicles impounded by a police officer will be inventoried. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company except under the following circumstances:
 - (A) If there is reasonable suspicion to believe that the safety of either the police officer(s) or any other person is at risk, a required inventory will be done as soon as safely practical; or
 - (B) If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a criminal offense, the inventory will be done at an appropriate time during the investigation.
- (2) The purpose for the inventory of an impounded vehicle will be to:
 - (A) Promptly identify property to establish accountability and avoid spurious claims to property;
 - (B) Assist in the prevention of theft of property;
 - (C) Locate toxic, flammable, or explosive substances;
 - (D) Reduce the danger to persons and property.
- (3) Inventories of impounded vehicles will be conducted according to the following procedure:
 - (A) An inventory of personal property and the contents of open containers will be conducted throughout the passenger area of the vehicle including, but not limited to, accessible areas under or within the dashboard area, in any pockets in the doors or in the back of the front seat, and in any console between the seats, and under the seats;
 - (B) In addition to the passenger area, an inventory of personal property and the contents of open containers will also be conducted in the following locations:
 - (1) Any other type of unlocked compartments that are a part of the

vehicle including, but not limited to, unlocked vehicle trunks and unlocked car-top containers;

- (2) Any locked compartments such as locked vehicle trunks, locked hatchbacks and locked car-top containers, if the keys are available to be released with the vehicle to the third-party towing company or an unlocking mechanism for the compartment is available within the vehicle.
- (C) Unless otherwise provided in this chapter, closed containers located either within the vehicle or any of the vehicle's compartments will not be opened for inventory purposes, unless:
 - (1) The closed container is to be placed in the immediate possession of a person at the time that person is placed in the secure portion of a custodial facility, police vehicle, or secure police holding room;
 - (2) The person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or
 - (3) The closed container is designed for carrying money and/or small valuables on or about the person such as closed purses, closed wallets, laptop carrying cases and closed fanny packs.
- (D) On completion of the inventory, the police officer will prepare a written inventory listing any valuables located during the inventory process.

1.45.045 Booking Inventories

- (1) Booking inventories of personal property shall be done as soon as the person is safely inside the booking room.
- (2) All personal property shall be collected and stored in an appropriate property locker.
- (3) All unlawful weapons, contraband and evidence shall be removed and placed in the property room until lawful disposition is determined.

1.45.050 Found Property Inventories (Bend Police Department)

- (1) All found property received by the Bend Police Department shall be inventoried.
- (2) Found property inventories shall be limited to a general inventory of the item(s) and its content(s).

- (3) Found property inventories shall be thorough enough to determine:
 - (A) Any evidence of the identity of the owner, and
 - (B) That no hazardous, dangerous or noxious material is retained in the property room.
- (4) The Bend Police Department may immediately dispose of hazardous, dangerous, noxious and perishable materials in a manner allowed by law.

1.45.055 Return of City Held Personal Property

- (1) Custody of Property. When personal property of substantial value other than abandoned motor vehicles is abandoned, left on property controlled by the City, is seized, or held by the City for any other reason, the property shall be held by the City. The Department that originally takes possession of lost property shall attempt to return it to the owner and if unsuccessful shall turn the property over to the Bend Police Department.
- (2) Recovery by Owner. At any time within 60 days after property described in Section 1 is taken into possession by the City, except when personal property is confiscated or held as evidence, the owner or person lawfully entitled to possession of the property may reclaim it after submitting satisfactory proof of the person's ownership or right to possession of the property, and after payment of any charges or expenses incurred in the storage, preservation and custody of the property.
- (3) Sale of Property. If property is unclaimed for more than 60 days, the City Police Chief may sell or dispose of any personal property described in Section 1. Property that has been confiscated, held for evidence or ordered to be destroyed by competent authority is exempt from this provision. The Police Chief shall post notice on the City's internet website of any public auction. Sale shall be for cash to the highest bidder. All net proceeds of the sale shall be paid to the City's general fund.
- (4) Title to Property Sold. All personal property described in Section 1 which is sold shall be sold as is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose.

CHAPTER 1.50 REAL PROPERTY

1.50.010 Purpose and application

This chapter provides procedures and standards for the acquisition and transfer of real property by the City.

1.50.020 Classification

Real property owned by the City is classified as follows:

- (1) Substandard Undeveloped Property. Lots or parcels without structures that are not of minimum buildable size for the zone in which they are located or that cannot be developed for other reasons;
- (2) Standard Undeveloped Property. Lots or parcels without structures that are of minimum or greater buildable size for the zone in which they are located and that can be developed;
- (3) Developed Property. Lots or parcels of any size with structures;
- (4) Special-Case Property. Any real property that, notwithstanding subsections (1), (2), and (3) of this section, were acquired by the City subject to an agreement restricting the use, transfer or disposition of the property. At the time of a proposed sale of real property by the City, the City Manager shall determine the classification of the property.

1.50.030 Sale of Substandard Undeveloped Property

The City Manager is authorized to sell substandard undeveloped property by direct negotiation with an adjoining property owner. The City Manager may, but is not required to, use a real estate broker to assist the transaction.

1.50.040 Disposal of Standard Undeveloped Property and Developed Property

- (1) Any proposed sale of standard undeveloped property or developed property shall be set for a hearing before the Council.
- (2) The City Recorder shall cause notice of the hearing to be published once in a newspaper of general circulation in the city at least five days prior to the hearing describing the property proposed for sale. Notice shall also be mailed to property owners within 500 feet of the subject property.
- (3) Public testimony shall be solicited at the hearing to determine if a sale of the property or any portion of it is in the public interest.
- (4) After the hearing, the Council shall decide whether to offer the property for sale and shall establish minimum acceptable terms.

The Council may decide to offer the property for sale only if it determines that the property is surplus to the City's needs.

- (4) Prior to the sale of developed real property, an appraisal of the property shall be conducted. The appraisal may be ordered prior to or after the hearing. The appraisal may be made available to the public at the hearing if it has been prepared by that time.
- (5) If a sale is authorized by the Council, it may direct that the property be listed with the City's real estate agent of record or direct that it be sold by bids. If sale is to be by a bidding process, a notice soliciting sealed bids shall be published at least once in a newspaper of general circulation in the city at least two weeks prior to the bid deadline date. The notice shall describe the property to be sold, the minimum acceptable terms of sale, the person designated to receive bids, the last date bids will be received, and the date, time and place that bids will be opened.
- (6) The City Manager is authorized to approve the sale of the property if the minimum acceptable terms set by Council are met.
- (7) If one or more bids are received at or above the minimum acceptable terms, the highest bid shall be accepted and the City Manager or designee shall complete the sale.
- (8) If no acceptable bids are received, the Council may:
 - A. Accept the highest bid among those received;
 - B. Direct staff to hold another sale, with the same or amended minimum terms;
 - C. Direct the property to be listed with the City's real estate agent of record, or if the City does not have a real estate agent of record, with a local real estate broker on a multiple listing basis.
 - D. Decide to keep the property.

1.50.050 Broker selection

The City may retain a real estate broker of record or retain real estate brokers on a case-by-case basis. Selection of a real estate broker shall be by a competitive process.

1.50.060 Acquisition of Real Property

The City Manager may approve the acquisition by the City of an interest in real property if the cost to the City is less than \$25,000.00. All other acquisitions of an interest in real property shall be approved by the City Council. Council authorization of a road, utility or other project requiring the acquisition of land shall constitute approval of the acquisition, even if the land to be acquired is not precisely described in the project approval. An appraisal shall be required for all property acquired by the city for more than \$25,000.00. Dedications of property for rights-of-way shall not be considered acquisitions of property by the city for purposes of this section and may be accepted by the City Manager, community development director, or public works director.

1.50.070 Transfer of an Interest other than Fee Title

The transfer of an interest in real property by the city is not a sale of surplus real property if the city retains title to the property. The City Manager may transfer an easement or other interest in real property less than fee title.

1.50.080 Transfer to another Governmental Entity

The City Council may authorize transfer of real property of any type to another governmental entity or to a non-profit entity, with or without consideration, for so long as the property is used for public purposes by the entity to which it is transferred. The agreement shall provide for return of the property to the city if the property is no longer used by the transferee for public purposes.

1.50.090 Special-Case Property

The city shall comply with all agreements and restrictions applicable to special-case property. The city may transfer special-case property following any of the applicable procedures provided by this chapter, subject to the restrictions imposed by deed or agreement. If the deed or agreement provides a procedure for transfer by the city, the city may transfer the property as provided by the deed or agreement.

1.50.095 Exchange of Real Property

- (1) The city Council may authorize the trade or exchange of real property with other governmental entities or with private parties.
- (2) The city shall exchange real property with private entities only if the city receives at least equivalent value for the property it transfers.

Payments may be made to compensate for any imbalance in the value of the property exchanged.

- (3) For exchanges with private entities, the city shall require or obtain an appraisal if the value of the property transferred by the city or received by the city exceeds \$100,000.00.
- (4) In determining the relative value of the properties exchanged, in addition to the factors normally considered in determining the value of property, the city may consider the following factors:
 - (A) Whether the property is adjacent to or otherwise enhances the value of other property the city owns.
 - (B) The suitability of the property for city use.
 - (C) Whether the transfer of the property being transferred by the city to a private party will result in a benefit to the city or community. Potential benefits may include allowing more cohesive development of an area, providing needed housing or employment opportunities, or increasing the city's tax base.

Chapter 1.55 PUBLIC CONTRACTS

1.55.010 Local Contract Review Board and Delegation of Authority

- (1) The City Council shall act as the Local Contract Review Board and shall have all powers authorized by state law and the city charter.
- (2) The Contract Review Board may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, applicable rules, and the Bend Code.
- (3) The City Manager shall have all authority relating to public contracting except authority specifically reserved to the Contract Review Board by this Chapter.
- (4) Except as specifically provided to the contrary in this chapter, the City Manager may further delegate authority granted by Sections 1.400 to 1.560.
- (5) The Local Contract Review Board may adopt rules relating to public contracts and the public contracting process, including exemptions

from formal competitive bidding or formal competitive proposal requirements.

- (6) As used in this chapter, "public contract" means any purchase, lease, or sale by the City of personal property, public improvements or services, including personal services. "Public contract" does not include collective bargaining agreements or other employment agreements between the City and its employees.

1.55.020 Purpose and Policies

- (1) The purposes of state public contracting law and this chapter are:
 - (A) To obtain public improvements, goods and services that result in the best combination of high quality and low cost to the City.
 - (B) To avoid favoritism in the award of contracts.
 - (C) To use a process appropriate to the type and amount of the contract.
 - (D) To encourage competitiveness among contractors.
 - (E) To use a fair process for the sale of surplus personal property to maximize net proceeds to the City.
- (2) The following policies apply to public contracting:
 - (A) The City shall comply and shall require all contractors to comply with Americans with Disabilities ("ADA") rules, regulations, & procedures, and will not discriminate on the basis of disability in its purchasing and contracting policies, practices, and procedures. Prospective contractors shall comply with the ADA in employment practices, and perform contractual obligations consistently with ADA federal requirements/regulations, state disability law, and applicable regulations.
 - (B) Sustainability. The City recognizes that the actions it takes in its operations, maintenance, policies and planning efforts will have impacts on sustainability in our community. It is the City's policy to encourage implementation of sustainable purchasing. Sustainable practices incorporate three broad factors: environmental stewardship, life cycle costing and equal opportunities for every person impacted by a

purchase. By including sustainability in purchasing decisions, The City can promote practices that improve public and worker health, use economic resources responsibly, conserve natural resources, and reward environmentally conscious manufacturers while maintaining cost excellence and value standards. The City shall consider sustainability in soliciting and awarding contracts.

1.55.030 Competitive Procurement

- (1) The City shall use a competitive procurement process in the award of all public contracts, except as exempted by state law or this subchapter. Personal service contracts may be awarded as provided in this section or in Section 1.55.040.
- (2) Competitive procurement includes:
 - (A) Invitations to bid and requests for proposals in compliance with state law and applicable rules. A process that involves a prequalification stage followed by an invitation to bid or request for proposals is a competitive process, provided the prequalification stage includes public notice equivalent to that required for invitations to bid and requests for proposals.
 - (B) For contracts of \$50,000 or less in value, obtaining bids or proposals from at least three potential contractors (limited solicitation).
 - (C) Awarding contracts under a federal or state master contract or purchase arrangement or program.
 - (D) Awarding contracts on the same terms as an existing contract award by another governmental entity after a competitive procurement.
 - (E) Awarding contracts for computer equipment, software and services based on obtaining bids or proposals from at least three potential contractors unless the City finds that fewer than three potential contractors provide the needed equipment, software or services.
- (3) The following contracts are exempt from competitive procurement;
 - (A) Contracts exempted from competitive procurement by the Oregon Contracting Code.

- (B) Contracts under \$5,000, which may be entered into by direct award.
 - (C) Emergency contracts awarded in compliance with applicable statutes and rules. In the event the emergency is of a nature that requires immediate action to prevent damage to property or health (e.g., a major water line break or sewage overflow) the City Manager, or in the City Manager's absence, the Chief of Police, Fire Chief and/or Public Works Director may use all the means necessary to meet the emergency. Any emergency contract in excess of \$100,000 shall be brought before the Contract Review Board for ratification at the next scheduled Council meeting.
 - (D) Public Facility Improvement Agreements entered into between the City and a person responsible for carrying out conditions of approval of a City land use decision.
 - (E) Purchases of used goods when the cost of the used goods is substantially below the cost of new goods, and the City has made a reasonable effort to obtain the best quality goods at the lowest price. The City shall maintain a written record of its efforts to obtain the best quality goods at the lowest price, including a list of quotes obtained from other vendors.
 - (F) Any other contracts where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code and the Model Rules in making the exemption.
- (4) The City may use competitive procurement even if a contract is exempt from competitive procurement requirements. An exemption from competitive procurement does not relieve the City of the obligation to take reasonable measures to ensure that procurements are consistent with the policy of obtaining the best combination of quality and price.
 - (5) Contracts awarded by competitive bids shall be awarded based on the lowest "life cycle" costs to the City. Life cycle costs include both initial cost and cost of operating, repair, maintenance and replacement. Contracts awarded by competitive proposals shall be awarded to the responsible proposer that provides the best combination of price and quality, and shall consider cost on a "life cycle" basis.

- (6) A procurement may not be artificially divided or fragmented to qualify for direct award or limited solicitation. A series of contracts with the same contractor for substantially similar work without a significant time between the contracts will normally be considered a single contract for purposes of determining whether an appropriate competitive selection process was used.

1.55.040 Personal Service Contracts

- (1) A personal service contract is appropriate for contracts for services where the individual qualifications and skills of the person providing the service are essential to the service. A personal service contract is awarded primarily on the basis of the contractor's qualifications including but not limited to criteria such as experience, training, knowledge, and expertise, technical skill, creativity, artistic ability, performance history, and demonstrated ability to exercise sound professional judgment. A personal service contract is not appropriate where price is the major factor and quality of service is only a minor factor and can be satisfied by compliance with minimum standards.
- (2) In addition to the selection procedures authorized by Section 1.55.030, personal service contract may be awarded by either of the following procedures:
 - (A) Direct appointment of the contractor believed to be able to provide the best services, taking into consideration expertise, ability, experience and cost if:
 - (1) The fee for the contract will not exceed \$10,000 in any 12-month period;
 - (2) The contract is for legal services or for an expert witness; or
 - (3) The City Manager has determined in writing that it is in the public interest to award the personal services contract without a competitive process and that the direct award will not promote favoritism or discourage competition and is otherwise consistent with the policies of this chapter;
 - OR
 - (B) By soliciting project specific scopes of work and costs from a list of potential contractors established by a request for

proposal process. Lists of qualified contractors for certain types of professional services may be established for up to five years by a competitive request for proposal process. The City will annually review the performance of contractors on the list and may delist contractors for poor performance. The City will also provide an annual opportunity for contractors to be added to the list by an additional request for proposal process. A list of rates and costs will be required as part of the request for proposals process.

- (3) The following rules apply to solicitation of personal service contracts by competitive proposals. A request for qualifications may be used as the first step in a request for proposal process.
 - (A) The City may arrange for any or all proposers to be interviewed for the assignment by an appropriate City employee or by an interview committee.
 - (B) Following a review of the proposals and interview (if used), the City shall select the contractor based on the criteria stated in the solicitation document, which may include the following factors:
 - (1) Specialized experience in the type of work to be performed.
 - (2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
 - (3) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.
 - (4) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
 - (5) Cost. Except when state or federal law or grant restrictions prohibit consideration of cost in selecting a contractor, the City shall consider cost as a factor in all contract awards, but cost shall not be the prime consideration in the selection of providers of

professional services.

- (6) Any other factors relevant to the particular contract.

1.55.050 Authority to Obligate the City

- (1) The City Manager may enter into a public contract that does not exceed \$100,000 without specific Council approval, provided the obligation is part of an adopted budget and a record is made of the transaction that shows compliance with applicable law and regulations. The City Manager may not delegate more than \$25,000 in contracting authority to any other position or department, but the authority of the City Manager under this section may be authorized by any person designated to act as City Manager in the City Manager's absence.
- (2) The City Manager may adopt forms, computer software, procedures, purchasing limits, change order standards and administrative policies for all City purchases. The City Manager may adopt purchasing policies dealing with ethics, sustainability, ADA compliance, conflicts of interest and other administrative matters consistent with this Chapter and applicable law.
- (3) All public contracts in excess of \$100,000, and amendments in excess of \$100,000, require approval of the Contract Review Board. The amount of the amendment is the total amount of cumulative amendments, but excluding subsequent phase costs authorized by subsection E. Contract approvals shall normally be placed on the consent agenda. Any contract approval removed from the consent agenda shall normally be reset for consideration at the next Council meeting, with direction to staff to provide additional information or analysis. If the matter is reset to a later meeting, two Contract Review Board members shall be designated to work with staff to address the issues, and staff shall prepare a supplemental report to address the issues.
- (4) All public contracts shall include a maximum contract price, which may not be increased by more than 25% or \$25,000, whichever is greater, for any single change, or 50% or \$50,000, whichever is greater, cumulatively, without approval of the City Manager. The City Manager's authority to approve increases may not be delegated except when the City Manager is absent from the City or otherwise unavailable for a week or longer. Changes in a contract will be permitted only when authorized by a written change order or amendment. Change orders that will increase the cost of a contract will be permitted only if there are unexpected conditions that could

not have been discovered with normal diligence prior to execution of the contract, if a project cannot be completed as designed, or if the need for the change order is the result of an action or decision by the City.

- (5) It is expected that the City will anticipate future needs when soliciting contracts and will scope work broadly enough to avoid the need for contract revisions to add work that could have been anticipated prior to entering into the original contract. The City may contract for work in phases, with a contract amendment for each phase. If work is to be performed in phases, the maximum contract price need only be established for the first phase, with estimates for future phases included in the contract. The maximum contract price shall be established by contract amendment prior to the start of each subsequent phase. If the maximum contract price for a subsequent phase is more than 25% greater than the estimated cost for that phase or if no estimate for future phases was included in the original contract, a new competitive procedure is required, except for personal service contracts for professional services that include a provision for establishing the cost of subsequent phases based on a review by a neutral third party. Any contract with phases shall contain provisions allowing the City to terminate at the end of any phase. The City Manager may waive the requirement for a new competitive procedure based on a determination that the waiver is in the public interest, will result in cost savings to the City, and will not discourage competition.

1.55.060 Purchasing from City Employees

- (1) The purchase of any supplies, materials, equipment, labor or services, including personal, professional, technical and expert services from any City employee, or any business with which a City employee is associated is discouraged but may be allowed subject to prior written approval by the City Manager and approval shall be based upon findings that:
 - (A) The purchase will be at the least cost to the City;
 - (B) The purchase will result in the most efficient method to accomplish the City's purpose;
 - (C) The purchase could not lead to any alleged violations of the personnel rules;
 - (D) The approval of the purchase could not lead to an adverse employer-employee relationship should the contract be

unsatisfactorily performed; and

- (E) The purchase is in compliance with all applicable laws, regulations and City policies.
- (2) For purposes of this section "any business with which a City employee is associated" means any business of which the employee or spouse, parent, child or sibling of the employee is a director, officer, owner or employee, or any business association in which the employee or spouse, parent, child or sibling of the employee owns or has owned more than ten percent of the business within the preceding calendar year.

1.55.070 Negotiation with Bidders

- (1) If all bids exceed the budget for the project or an engineer's cost estimate, the City may, prior to contract award, negotiate for a price within the project budget, including an amended project budget. Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, the City may begin negotiations with the next lowest responsive, responsible bidder. Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount. A contract may not be awarded under this section if the responsibilities of the contractor are significantly changed from the description in the solicitation documents, as determined by the City Manager.
- (2) If the low bid is substantially below the budget for the project and the engineer's cost estimate, if any, the City may negotiate for additional work on the same project on the same terms as the bid.

1.55.080 Model Contract Forms

- (1) City model contract forms will be used unless the City Manager or City Attorney authorizes use of an alternate form. Terms may be amended to take into account specific circumstances. Contracts shall include the following provisions:
 - (A) A requirement that the contractor defend, indemnify, and hold harmless the City, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of the contractor's performance under the contract.
 - (B) A provision requiring the person or entity providing the

service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

- (C) Contract provisions mandated by State and Federal law. These provisions may be incorporated by reference unless the law requiring the provision requires the provision to be set forth in full.
 - (D) A maximum contract price. The City Manager may authorize contracts without a maximum contract price if the City Manager determines that there is no reasonable way to establish a maximum contract price and that it is in the best interest of the City to proceed with the contract. The authority granted by this section may not be delegated.
- (2) Public improvement contracts shall include provisions requiring compliance with any standards and specifications adopted by the City Council, the City Manager, the City Engineer and/or the Public Works Director. Compliance with adopted standards and specifications is required for all public improvements even if the standards and specifications are not referenced in the contract.

1.55.090 Disposition of surplus personal property

- (1) Personal property owned by the City and under the dollar value of \$5,000 may be declared surplus and disposed of with the approval of any department head or the City Manager. Personal property with a value of less than \$25,000 may be disposed of only after being declared surplus by the City Manager. Personal property with a value greater than \$25,000 may be declared surplus and disposed of only with the approval of the City Council or if beyond an adopted replacement schedule. No personal property shall be declared surplus if the property is usable and needed by any City department. The method of disposal will be determined based on condition, value, demand, and/or use. Personal property may be declared surplus if it is scheduled for replacement in an adopted budget or it is no longer necessary to provide City services.
- (2) When the current market value of an item is estimated to be more than \$25,000, the personal property must be disposed of in a competitive process that includes at least one notice published in a local newspaper. The City at its discretion may choose between sealed written bids, a public auction, an internet auction, or some other process that allows competitive bidding. If no bids are

received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected, and the City may negotiate a sale subject to the following conditions:

- (A) An appraisal of the market value of the property is obtained and documented, and the negotiated sale price meets or exceeds the market value; or
 - (B) The sale amount exceeds the highest bid received through the bidding or auction process.
- (3) The City may sell personal property whose value is estimated to be less than \$25,000 by any means calculated to achieve the best net result to the City.
- (4) City employees who have participated in the process of declaring goods to be surplus may not purchase or otherwise acquire surplus goods from the City. Other City employees may not purchase or otherwise acquire surplus goods until the general public has a reasonable opportunity to bid on, purchase or otherwise acquire the goods. Departments may adopt additional rules relating to the acquisition of surplus goods by City employees.
- (5) The City may retain one or more agents to sell surplus personal property if the selection of the agent was conducted by a competitive request for proposal process.
- (6) The City may, with the approval of the City Manager and without a competitive process, transfer surplus personal property with or without remuneration to the following entities:
 - (A) Another public agency;
 - (B) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property;
 - (C) Any private, non-profit social or health service activity or entity; or
 - (D) Any other recognized non-profit activity that is certified to receive federal surplus property.
- (7) The City may give away surplus personal property to the public at

no charge on a first-come, first-served basis for property that it would otherwise pay to dispose of. A City employee may take property under this provision only after it has been available to the public for a reasonable period of time (15 minutes if widely publicized in advance, one working day if not publicized in advance).

- (8) The City may trade personal property owned by the City to other government agencies or to other entities provided the following conditions apply:
 - (A) Trades to other government agencies must be approved in writing by the City Manager.
 - (B) Trades of personal property with parties other than government agencies must proceed as follows:
 - (1) The market value of both the item to be given and the item to be received must be documented.
 - (2) The proposal to trade an item for another item must be made available to an adequate number of other potential traders to encourage competition.
 - (3) The trade must be approved by the City Manager.
- (9) If the City is purchasing new goods or equipment to replace existing goods or equipment and the seller accepts trade-ins, the City may trade in the old equipment in order to get a reduction in the price of the new goods without going through any process for the sale of the used goods.
- (10) The City may dispose of surplus property that has no monetary value or that has a monetary value insufficient to cover the costs of a sale by disposing of the property as waste. Property that would otherwise be disposed of as waste may be made available to the public at no charge or at a minimal charge.
- (11) All personal property sold or otherwise disposed of by the City shall be sold as-is without any warranty of any kind. Goods sold through an auction or other third-party seller shall be provided along with a bill of sale or receipt disclaiming all warranties.

CHAPTER 1.60 EMERGENCIES

1.60.005 Emergency Situation and Declaration

An emergency situation exists when the health, safety or welfare of the city or a portion of the city is threatened by a potential or actual natural disaster, accident, act of war or terrorism, disease, or other event or ongoing occurrence that results in an immediate and substantial threat to life, health or property. The city may declare an emergency following the procedures of Section 1.60.015 when an emergency situation exists.

1.60.010 Effect of Emergency Declaration

- (1) On declaration of an emergency, the city shall have all powers not prohibited by federal and state constitutions and laws, including any powers authorized in emergency situations. The powers of the city shall be exercised by the incident commander. The incident commander shall be the city manager or other person designated in the emergency declaration. Notwithstanding the delegation of powers to the incident commander under this section, the City Council will remain the governing body of the city and the incident commander shall remain subject to Council direction and control.
- (2) Notwithstanding any other provision of law, the city may take the following actions during an emergency:
 - (A) Procure goods and services without compliance with normal procurement procedures
 - (B) Use any available city funds for emergency purposes
 - (C) Close or limit the use of streets and other public places
 - (D) Order and assist the evacuation of people to protect safety or health
 - (E) Turn off water, gas, fuel, or electricity
 - (F) Control, restrict, and/or regulate the sale of goods and services, including the imposition of price controls
 - (G) Prohibit the sale or possession of any weapons or explosives in public places
 - (H) Any other action for the protection of safety, health, life or property
- (3) In the event of an emergency, the city will continue to provide government services to the extent reasonably practical under the circumstances. City employees are expected to report to work and may be assigned to duties other than their regular job responsibilities.

1.60.015 Emergency Declaration

A declaration of a state of emergency within the City of Bend may be issued by the City Manager. Prior to declaring an emergency, the City Manager will make reasonable efforts to contact City Councilors to inform them of the need to declare an emergency.

The City Manager will submit the declaration of emergency to the Deschutes County Emergency Manager for County Commissioner approval. At its next City Council meeting, the Council shall consider ratification of the declaration of emergency.

1.60.020 Emergency Management Policies and Procedures

The City Council shall adopt an Emergency Operations Plan and the City Manager shall periodically review the Plan, in an effort to establish procedures to prepare for and carry out activities to prevent, minimize, respond to or recover from an emergency.

Chapter 1.65 CLAIMS PROCESS FOR ORS 195.300 – 195.336

1.65.005 Definitions.

The definitions in this Section apply in this Chapter. Terms used in this Chapter have the same meaning as in ORS 195.300 – 195.336. This Chapter is to be interpreted to be consistent with ORS 195.300 – 195.336.

(1) Appraisal: A written statement as to the value of the property for which the claim is made prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308 and in compliance with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) Reduction in Fair Market Value: The difference in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment.

(3) Waive or Waiver: An action or decision authorizing a claimant to use property without application of the land use regulation(s) to the extent necessary to offset the reduction in fair market value of the property.

1.65.010 Claims Procedure

Claims for compensation or waiver of a land use regulation under ORS 195.300 – 195.336 are subject to the following procedural requirements:

(1) All claims shall be filed in person or by U.S. Mail. The filing date is the date the claim is received by the City. Claims are to be submitted to the Community Development Department.

(2) Claims must be on City claim forms and include:

(A) The name and address of each owner;

(B) The date when the property was acquired by the current owner;

- (C) The address, if any, and the assessor's map and tax lot number of the property that is the subject of the claim;
 - (D) A statement of the owner's desired use of the property for residential use;
 - (E) Specification of each land use regulation enacted after January 1, 2007 that is alleged to restrict the person's desired use of the property and when the land use regulations were enacted;
 - (F) The amount of reduction in fair market value alleged for each regulation at issue;
 - (G) Whether a previous permit was issued for development of the property including a description of the use and the case file number; and
 - (H) Whether a claim was filed for the subject property with the state or any other government; and
 - (I) The cost of the appraisal.
- (3) In addition to the claim form, the application must include:
- (A) A copy of the instrument conveying the property to the claimant;
 - (B) A title report from a title company including the name of the person in whom is vested, the most recent transfer date, and a list of recorded exceptions and encumbrances;
 - (C) The written consent of all of the owners if there is more than one owner;
 - (D) An appraisal showing the fair market value of the property one year before the enactment of each land use regulation and the fair market value of the property one year after the enactment. The appraisal must include a determination of the highest and best use of the property.
 - (E) A claim review fee in the amount established by Council Resolution.

1.65.015 Summary Rejection of Claim

The City shall summarily reject a claim if:

- (1) The claim is not filed within five years from the date the land use regulation was enacted;
- (2) An application for a comprehensive plan or zoning amendment has been

approved for the subject property since the date of the regulation complained of; or

(3) The highest and best use of the property was not residential at the time the land use regulation was enacted.

1.65.020 Completeness

For claims that are not summarily rejected, the City shall

- (1) Determine whether a claim is complete within 60 days.
- (2) Notify the claimant of any missing information or required submissions within 60 days of receipt of the claim.
- (3) Classify the claim as complete when all required information and materials are submitted, or when the claimant provides written notice that no additional information will be provided.

1.65.025 Claims Processing

- (1) If a claimant fails to respond to a notice of missing information under Section 1.451.55.020B within 60 days, the claim will be deemed withdrawn.
- (2) On receipt of a complete claim, City staff will prepare a written recommendation to the City Council.
- (3) City shall provide notice of a public hearing on the claim at least 30 days prior to the public hearing . The notice shall be sent to:
 - (A) All property owners of record within 250 feet of the subject property, including all owners of the property;
 - (B) Deschutes County;
 - (C) The recognized neighborhood association in which the subject property is located; and
 - (D) The Department of Land Conservation and Development.
- (4) The notice shall contain:
 - (A) A description of the claim and the property;
 - (B) The date, time and place of the hearing;
 - (C) A statement that judicial review of the City's decision final determination on the claim will be limited to the written evidence and arguments

submitted to the city;

- (D) A statement that judicial review is available only for issues raised with sufficient specificity to allow the City to respond.
 - (E) A statement that all testimony and written submittals must be submitted prior to the close of the final public hearing on the claim;
 - (F) Any other information deemed appropriate by the City.
- (5) A staff report recommending approval or denial and addressing the approval criteria shall be prepared and will be available at least seven calendar days prior to the hearing. If the recommendation is for approval, the staff report shall include a recommendation on the amount of compensation or the extent of the waiver recommended.

1.65.030 Approval Criteria

A claim may be approved only if the claimant demonstrates by a preponderance of the evidence that the following criteria are met:

- (1) A city enacted land use regulation enacted after January 1, 2007 and after the property was acquired restricts the claimant's desired residential use of the property.
- (2) The land use regulation has the effect of reducing the fair market value of the property.
- (3) The highest and best use of the property at the time the property was acquired is restricted by the land use regulation.
- (4) The land use regulation is not an exempt land use regulation under ORS 195.305.
- (5) All other requirements of ORS 195.300 to 195.336 have been met.

1.65.035 Council Review and Decision.

- (1) The Council shall make its decision after the close of the public hearing and within 180 days of the date the application became or was deemed complete. The Council decision shall be based on the written record and the testimony provided to the Council.
- (2) The Council may reject the claim, pay compensation or waive the land use regulations to the extent allowed by statute.

- (3) The Council may impose conditions of approval on any waiver. Failure to comply with any condition of approval is grounds for revocation of the waiver.
- (4) The City shall send a copy of the Council's decision to the claimant, to those who were sent notice, and others who appeared in the process. The notice shall describe the decision, including the amount of any compensation provided or the extent of development allowed by any waiver.

1.65.040 Effect of Waiver.

A decision to waive a land use regulation does not excuse noncompliance with regulations not expressly waived in the decision.

1.65.045 Procedural Error

No procedural defect in processing a claim shall invalidate any proceeding or decision unless the party alleging the error demonstrates prejudice to a substantial right. Inadvertent failure to provide notice or complete notice shall not be grounds for invalidating a decision.

1.65.050 Recordation of Waiver

A memorandum of any waiver shall be recorded in the county deed records.

1.65.055 Judicial Review

Judicial review of the City's final decision under this Chapter shall be by judicial review under ORS 34.010 to 34.100. No action will be taken on a final decision until the time for filing judicial review has passed or until the final decision on judicial review or further appeal.

1.65.060 Ex Parte Contacts, Conflict of Interest and Bias.

The statutes, regulations and standards applicable to ex parte contacts, conflict of interest and bias in a quasi-judicial land use process apply to the process under this Chapter.